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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No.96 of 1989
Date of decision:1.2.2007

The Commissioner of Income-Tax, Amritsar ...Petitioner

Versus

M/S Shree Lalit Fabrics (P) Ltd., Amritsar ...Respondent

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Sanjiv Bansal, Advocate for the Revenue.

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RAJESH BINDAL, J.

The Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, 'the Tribunal) has referred under Section 256(1) of the Income Tax Act, 1961 (for short 'the Act') the following questions of law which emerge from its order dated 20.2.1987 in ITA No.459(ASR)/1986 for the assessment year 1983-84:-

> "1. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that finishing unit No.2 of the assessee company was engaged in a manufacturing activity and the deduction u/s 80J was admissible to the company?
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> 2. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the assessee's industrial undertaking was engaged in the manufacture or production of any article or thing and therefore, the investment allowance on the machinery of the value of Rs. 7,66,746/- was admissible to the company?"

Briefly the facts as noticed by the Tribunal in the statement of case are as under:-

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"The assessee is a private limited company and its accounting year relevant to assessment year under consideration ended on 30.4.1982. It was engaged in the business of gray cloth which was bleached, dyed, finished and printed and the end product sold by it was finished and printed cloth. During the accounting period ended on 30.4.1979 relevant to the assessment year 1980-81, it installed a finishing unit which is described as Unit No.2. Prior to the installation of finished unit, the assessee got the finishing job done through outsiders before undertaking the printing work. In earlier years, deduction under section 80J in respect of Unit No.2 had been allowed by the Income-tax Officer in the first three assessment years and the year under consideration was the fourth year of assessee's claim. According to the revenue, the activity of bleaching, dying, finishing and printing of cloth did not constitute manufacture or production of any article or thing. Therefore, deduction under section 80J was disallowed. On appeal, the Commissioner of Income-tax (Appeals) allowed the claim of the assessee which has been upheld by the Tribunal."

Though learned counsel for the Revenue referred to and relied upon the judgments of Patna and Bombay High Courts in **Commissioner of Income-Tax Vs. Natraj Processing Industries (1993) 203 ITR 833** and **Commissioner of Income-Tax Vs. Fashion Prints Limited (1996) 217 ITR 456** respectively to submit that process involved in the present case does not amount to manufacture but still he could not dispute that the judgment in **Niemla Textile Finishing Mills P. Ltd. Vs. Income-Tax Officer and another (1985) 152 ITR 429**, which was referred and relied upon by the Assessing Officer to deny the benefit of investment allowance to the assessee was overruled by five Judges Bench of this Court in **Commissioner of Income-Tax Vs. Sovrin Knit Works (1993) 199 ITR 679.** The relevant observations are extracted below:-

"We now find that, following the judgment of the Supreme

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Court in *Empire Industries Ltd.'s* case [1986] 162 ITR 846, the Tribunal, in *Deputy CIT* V. *Shree Lalit Fabrics Pvt. Ltd.* [1992] 198 ITR (A.T.) 190 (Chandigarh), has also taken the same view, namely, that bleaching, dyeing and printing of grey cloth amount to manufacture or production of an article or thing within the meaning of Section 32 A of the Act.

Such, thus, now being the settled state of the law, we are, with respect, constrained to hold that the view expressed in *Niemla Textile Finishing Mills P. Ltd.'s* case [1985] 152 ITR 429 (P & H) [FB], that a company engaged in dyeing, printing, singeing or otherwise finishing or processing of fabrics would not fall within entry 23 of the First Schedule nor would it be entitled to claim advantage of the provisions of section 280ZB of the Act, does not lay down the correct law and this judgment has consequently to be overruled. These processes must clearly be held to fall within the meaning of "manufacture and production" in terms of item No.(32) of the Fifth Schedule to the Act and hence also under entry 23 of the First Schedule of the Industries (Development and Regulation) Act, 1951"

It has further been followed by this Court in **Commissioner of Income-Tax Vs. Varun Processors (P.) Ltd. (2002) 254 ITR 564** while rejecting the appeal filed by the Revenue.

The issue raised being already covered by judgment of this Court, we need not refer to the views taken by other High Courts.

Accordingly, for the reasons stated in **Sovrin Knit's** case (Supra) the question referred is answered against the Revenue and in favour of the assessee.

(Rajesh Bindal)
Judge

February 01 ,2007 **(M.M.Kumar)**
Pka **Judge**

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